S. HRG. 98-398

GRAIN STORAGE COMPENSATION ACT OF 1983

HEARING

BEFORE THE

SUBCOMMITTEE ON
AGRICULTURAL PRODUCTION, MARKETING,
AND STABILIZATION OF PRICES

OF THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 596

A BILL TO PROVIDE SURPLUS COMMODITIES TO FARMERS WHO LOST GRAIN STORED IN CERTAIN INSOLVENT WAREHOUSES

JULY 28, 1983

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GRAIN STORAGE COMPENSATION ACT OF 1983

THURSDAY, JULY 28, 1983

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL PRODUCTION,
MARKETING, AND STABILIZATION OF PRICES OF THE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 328-A, Russell Senate Office Building, Hon. Thad Cochran (chairman of the subcommittee) presiding.

Present: Senators Cochran and Huddleston.

Also present: Senator Pryor.

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM MISSISSIPPI

Senator COCHRAN. The subcommittee will be in order.

We are convened this morning to consider S. 596, the Grain Storage Compensation Act of 1983. I have a statement which I will put in the record in its entirety.[1]

We compliment Senator Pryor for his initiative and the hearings that he has held in his State of Arkansas on the problems of insolvency of grain elevators and the impact that has on farmers who store grain in those elevators.

This proposal is for the payment-in-kind program that will help compensate farmers who have suffered losses due to the insolvency or bankruptcy of the elevator operator.

Welcome to the hearing, Senator Pryor, and we would ask that you go ahead and proceed in any manner that you wish.

STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman.

Mr. Chairman, I think it would be appropriate at this stage to put in the record a modification to the bill. I would like to ask unanimous consent to file this modification at this time and have it printed in full in the record. The original bill, S. 596, is basically a direct payment of grain to the farmer.

This modification basically, Mr. Chairman, makes this program a loan program, over a 10-year period.

Senator COCHRAN. It will be included at this point.

[1] See p. 29 for the prepared statement of Senator Cochran.

SUBSTITUTE FOR S. 596 PROPOSED BY MR. PRYOR

Purpose: To require the Secretary of Agriculture to conduct a grain loan program to compensate those farmers who lost grain due to a grain elevator bankruptcy which occurred between the date of the Soviet grain embargo and the date of enactment.

SECTION 1. This Act may be cited as the "Grain Storage Compensation Act of 1983".

SEC. 2. As used in this Act, unless the context clearly requires otherwise—

(1) the term "depositor" means the owner or holder of a scale ticket, a warehouse receipt, or other original source document issued by a warehouse for grain who resides in a State and who is entitled to possession of payment for the grain represented by such ticket, receipt, or other document;

(2) the term "grain" means barley, corn, cotton, dry edible beans, flaxseed, grain sorghum, oats, rice, rye, soybeans, sunflower seeds, wheat, and any other commodity which is commonly classified as a grain and traded at, or stored in, a warehouse;

(3) the term "insolvent" has the same meaning given to such term under section 101(26) of title 11, United States Code;

(4) the term "Secretary" means the Secretary of Agriculture;

(5) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific;

(6) the term "surplus commodities" means agricultural commodities owned and held by the Commodity Credit Corporation that are not obligated for any other purpose under any other provision of law; and

(7) the term "warehouse" means every building, structure, or other protected inclosure in which any agricultural commodity is or may be stored.

COMPENSATION FOR INSOLVENCY OF WAREHOUSES

SEC. 3. (a) Subject to subsection (b), in any case in which a depositor has sustained a loss of grain, the loss of such grain was the direct result of the insolvency of a warehouse in which the grain was stored, and the insolvency occurred at any time during the period beginning on December 1, 1979, and ending on the date of the enactment of this Act, the Secretary shall transfer to such depositor, in accordance with this Act—

(1) surplus commodities of the same type as the lost grain in such amount and quality the Secretary determines sufficient to compensate such depositor for such loss; and

(2) if the Secretary determines that there are insufficient quantities of grain to meet the requirements of clause (1), surplus commodities other than such grain in such amount, type, and quality the Secretary determines sufficient to compensate such depositor for such loss.

(b) To be eligible to receive such compensation under this Act, a depositor must enter into a contract with the Secretary under which the depositor agrees—

(1) to transfer to the Secretary in no more than ten equal annual installments agricultural commodities in such amount, type and quality as the Secretary determines equal the amount of compensation received by the depositor under this Act; and

(2) to comply with such other terms and conditions as the Secretary determines necessary to effectuate the purposes of this Act or to facilitate the administration of this Act, or both.

NOTICE OF COMPENSATION

SEC. 4. (a) Within sixty days of the date of the enactment of this Act, the Secretary shall publish—

(1) in the Federal Register a notice containing a list of the warehouses throughout the United States which became insolvent during the period described in section 3; and

(2) in a newspaper of general circulation in the area of each warehouse which became insolvent during the period described in section 3 a notice containing the name of such warehouse.

(b) The Secretary shall include in each notice described in subsection (a) a summary of the compensation program provided for in this Act, including a summary of the eligibility requirements described in section 5(a).

PAYMENT OF COMPENSATION

SEC. 5. (a) To be eligible to receive compensation under this Act, a depositor must, within sixty days after the date of publication of the notice described in section 4(a)(2), file a written application for such compensation with the depositor's local office of the Agricultural Stabilization and Conservation Service. The application must describe the type and quantity of grain lost as a result of the insolvency of a warehouse described in section 3.

(b)(1) Within thirty days of the receipt of an application described in subsection (a), the Secretary shall determine if a depositor qualifies for compensation under this Act.

(2) If the Secretary approves an application for compensation under this Act, the Secretary shall, at the earliest practicable time, transfer to such depositor surplus commodities, or title to such commodities, in accordance with section 3.

(3) If the Secretary denies, in whole or in part, an application for compensation under this Act, the depositor shall have the right to appeal administratively such denial.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Senator PRYOR. Mr. Chairman, thank you very much for holding these hearings this morning. S. 596, the Grain Storage Compensation Act of 1983, is a bill that I think is needed very much in certain areas of the country. We appreciate very much the chairman of the full committee, Mr. Helms, scheduling this hearing; we appreciate you, Senator Cochran, for presiding over this hearing this morning.

I am especially pleased that one of my constituents, Steve Bernard, of Hughes, Ark., is with us this morning. Steve Bernard has been most instrumental in developing this idea. I think he will not only tell us about this program and how it will work; but he also will give us some insight into how this program will help many farmers who have been severely damaged by elevator bankruptcies. This is a problem for many farmers in the State of Arkansas who have experienced grain elevator losses since the embargo was imposed on the Soviet Union in early 1980.

The losses have run into millions and the farmers have lost many, many thousands of dollars. This bill is an effort to provide them with an opportunity to save their businesses and to continue to be taxpaying citizens.

I believe that the Senator from Kansas, Mr. Dole, might appear before this committee this morning. I know he has worked very hard on the issue of elevator bankruptcies. He has drafted many changes in existing bankruptcy law. I support Senator Dole's efforts in this area, because I think the changes are going to be very helpful, indeed, in the bankruptcies that occur in the future; however, I think there is a real need to deal with some of the elevator bankruptcies that have occurred in the last few years. That is why my bill, S. 596, as modified, dates back to the date of the Soviet grain embargo. It applies to losses which occurred between that date and the date of enactment; therefore, it is not an open-ended piece of legislation.

My bill is in response, Mr. Chairman, to a then-existing decision which became a policy of this country at the date the embargo was imposed. It is intended to help those farmers who, through no fault of their own, had their grain stored in elevators that ultimately

became insolvent; it is intended to help those particular farmers out of a severe crisis.

In summary, Mr. Chairman, I would just like to make four or five key points about this bill.

First, it establishes a program within the Department of Agriculture to compensate farmers for lost grain in grain elevator bankruptcies; second, the program would be in the form of a grain loan; the producer would, in essence, borrow the amount of grain he lost from Government-owned stocks and in return agree to pay the amount back in kind over a 10-year period.

The Secretary would be authorized to loan commodities other than the type lost by the producer if sufficient quantities did not exist in Government-owned stocks. The program is not open-ended and is only for warehouse insolvencies which occurred between the date of the Soviet grain embargo and the date of enactment.

The program would operate as follows:

Within 60 days after the date of enactment, the Secretary would be required to publish in the Federal Register, and in a newspaper of general circulation in the area of the warehouse, a list of the warehouses which became insolvent for a period contained in this act.

A producer would then have 60 days to submit, in writing, his loss and ask for a grain loan.

And finally, the Secretary of Agriculture would then either approve or deny his application. If approved, the producer would then execute the loan agreement to repay the Government back in 10 equal annual installments.

Mr. Chairman, this legislation is simple; basically it allows farmers to get back on their feet after they have lost in many instances their whole crop; in some cases, it will allow them to repay loans from the Farmers Home Administration or other Government agencies. It does not create one additional job; no additional bureaucracy is going to be required; and it really sort of says to the farmer, "we made a horrible mistake in the embargo and as a result of this mistake, we would like to take this opportunity, in a spirit not only of good will but also good faith with the farmers; we return you to the status quo." I think it is fair for all concerned and I am very hopeful that the committee will give it its careful consideration.

Senator COCHRAN. Thank you very much, Senator. We look forward to hearing from all of the witnesses this morning. We have a representative from the administration here, Merrill Marxman, Deputy Administrator, Commodity Operations; and then a panel of three witnesses who will talk about the legislation and their views regarding it.

I think we will go ahead and ask Mr. Marxman to come forward and you could take that chair.

We have a copy of a written statement which you have submitted and we appreciate having it. We will make it a part of the record and ask for you to summarize the statement for us, if you will.

Welcome to the committee.

STATEMENT OF MERRILL MARXMAN, DEPUTY ADMINISTRATOR, COMMODITY OPERATIONS, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. MARXMAN. Thank you, Mr. Chairman.

It is indeed a pleasure to be with you. I appreciate the opportunity to come on behalf of the administration and USDA and discuss with you the legislation proposed. I will briefly summarize, if I may, the statement that you have before you.[1]

The USDA is quite aware of and concerned about the problems of grain elevator bankruptcies. Secretary Block, before he became the Secretary, was deeply involved in his position in his home State of Illinois and worked hard there dealing with insolvencies in Illinois. Because of his keen interest and concern with grain elevator bankruptcies, on February 26, 1981, he established a grain elevator task force and that task force issued its report and made seven basic recommendations on August 18, 1981.

The four main recommendations that the task force put forward were, first, USDA should coordinate its efforts with State departments of agriculture, in regards to warehouse standards.

Second, that USDA should amend its standards for approval so that warehousemen that file financial data with Commodity Credit Corporation [CCC] would improve upon the financial data that is on file; increase the net worth requirements and provide for irrevocable letters of credit in lieu of bonds for those that are not able to obtain the necessary bonding.

Third, increase the net worth requirement and require an unqualified certified statement prepared by a CPA of all warehouses licensed under the U.S. Warehouse Act. And, fourth, to establish a special team, if you will, to deal with warehouse problems after a license has been suspended or there are indications that a warehouse is in trouble.

These were the four main recommendations of the task force. I would like to just bring you up to date as to the progress that has been made in those four areas.

We presently have cooperative agreements with about 10 States and we are continuing to work with the rest of the States in hopes that we can continue to develop better cooperative agreements between USDA and the States in working with this problem.

Effective July 1, 1982, the Uniform Grain Storage Agreement financial net worth requirements were increased from 10 cents per bushel times the approved capacity of the warehouse to 20 cents per bushel and an irrevocable letter of credit would be accepted in lieu of a bond in cases where the warehouse could not meet the minimum financial requirement.

Likewise, warehousemen are required to file an independent public accountant [PA] review statement on their warehouse operations. The USDA would examine all UGSA warehouses once a year with the option of additional reviews requested by the Commodity Credit Corporation if there was a feeling that there was a need for any additional examination.

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[1] See p. 31 for the prepared statement of Mr. Marxman.

Effective July 2, 1982, the minimum financial net worth requirements for warehouse licenses under the U.S. Warehouse Act were increased from $10,000 to $25,000. Warehousemen are required to file an audit by a certified public accountant. However, an audit or review by an independent public accountant would be acceptable with the understanding again that the Secretary could make additional on-site examinations if he so desired. And the special team that was recommended has been established and deals with special warehousing problems.

Since January 1, 1981, there have been 22 filings of bankruptcies by grain warehouses under contract to Commodity Credit Corporation. Sixteen filed under chapter XI; the remainder filed under chapter VII.

Now, at least 8 had CPA audits and 4 had CPA reviews, of the 22 total filings. The nature and scope of the grain elevator bankruptcy problem needs careful definition. The rate of bankruptcy among grain elevators is much lower than the rate for all other businesses. Although grain elevator bankruptcies are not a widespread problem, an elevator bankruptcy can cause severe dislocations within an area of trade.

The USDA supports amendment of the Bankruptcy Act to require that property interests of farmers and other grain handlers be given priority attention, which would go a long way toward relieving a distress caused by lengthy bankruptcy proceedings. Any such amendment should neither interfere with State regulation of grain warehouses nor undermine the validity of the warehouse receipt.

The USDA does not believe the creation of a new agency is necessary to address the grain warehouse bankruptcy problem nor does the USDA support indemnity or insurance programs. The cost of premiums would eventually increase cost to the producers to do business with the warehouse. An insurance program would require an enlarged bureaucracy even if no new agency were created. The magnitude of the bankruptcy problem does not warrant the extra expense and paperwork that would be involved with an insurance program.

Mr. Chairman, as the committee has requested, our comments today are on the substitute version of S. 596 that Senator Pryor referred to and gave testimony and presented here this morning.

The Department is opposed to both the original, S. 596, and to the substitute. As introduced, S. 596 would provide compensation to individuals who have lost grain through the insolvency of a public grain warehouse during the period beginning December 1, 1979, and ending on the date of enactment of the bill.

Under this bill, the Secretary of Agriculture would be required to provide these persons surplus commodities in quantities sufficient to compensate them for their losses. The surplus commodities would come from available stock. Now, the substitute version of S. 596 would provide assistance to any depositor who has lost grain through the insolvency during this period. And under the substitute, the Secretary of Agriculture would be required to provide a loan of surplus commodities.

The grain elevator task force identified two important nonquantifiable factors in grain elevator failures as being the recent state

of the general economy and high interest rates charged on business loans. Of factors which contributed to bankruptcy and which could be quantified, poor management was the No. 1 cause, followed by inadequate recordkeeping, possible criminal activity, collateral warehouse receipts, quality/quantity problems, possible diversion of funds, future market speculation, and delayed pricing contracts.

In our view, it is inappropriate to divert CCC stocks, which have been acquired in connection with the administration of the Department's price support and production stabilization program and are intended for use in carrying out CCC activities, into a program which guarantees not only agricultural producers, but virtually everyone else in the grain trade against losses because of a warehouse bankruptcy. We believe it particularly inappropriate that CCC assets be used to provide compensation for the bankruptcy of warehouses which have not met minimum Federal standards by obtaining a license under the U.S. Warehouse Act or entering into a Uniform Grain Storage Agreement with the Commodity Credit Corporation. As the bill is currently worded, it appears that such warehouses would not even have to meet minimum State licensing standards in order for a depositor to receive compensation.

In addition, we believe the steps USDA has already taken and continues to take will eliminate the need for enactment of S. 596 and the related expenditures.

Mr. Chairman, this concludes my statement and I will be glad to respond to any questions that you may have.

Thank you.

Senator COCHRAN. Thank you very much, Mr. Marxman.

You point out in your written statement that there have been 37 bankruptcies of grain elevators in 1979 and 37 in 1980.

Do you have figures for 1981 or 1982?

Mr. MARXMAN. Yes; I mentioned from January 1, 1981, there have been a total of 22 that have Uniform Grain Storage Agreements with Commodity Credit Corporation. The figures for 1979 and 1980 give us a picture of total insolvency, talking about whether they are State licensed, federally licensed or not licensed at all or have a Uniform Grain Storage Agreement with us. So 37, 37 and then a total of 22 since January 1, 1981.

Senator COCHRAN. Until the present time?

Mr. MARXMAN. Yes.

Senator COCHRAN. OK.

Is there any estimate that anyone has made about how much this would cost the Government or cost the CCC if it were enacted and implemented? Has anybody costed it out?

Mr. MARXMAN. No, sir.

Senator COCHRAN. I had been under the impression that Senator Dole, in his capacity as a member of the Judiciary Committee, shepherded a piece of legislation in that committee which would help establish a new kind of protection for farmers in connection with these bankruptcies. Are you familiar with that legislation and the status of it and whether or not it has anything to do with this bill we have under consideration now?

Mr. MARXMAN. Yes; we are familiar with the bill and as I mention in my testimony, we are very supportive of Senator Dole and the others in Congress that have moved in that direction; and I am

sure Senator Pryor himself probably has a great deal of familiarity with the changes that he has introduced trying to address what happens once a farmer finds himself in a bankruptcy situation and what we can do to expedite the handling of that bankruptcy.

It appears and it seems quite obvious that any time you have a bankruptcy occur, that it is a long drawn out process that the farmer is involved in before it comes to an end. So Senator Dole's legislation attacks it from that standpoint, that once you have reached that situation, it attempts to implement and expedite the handling of the bankruptcy.

I can't really say at this point exactly where that is.

Senator COCHRAN. Yes; I thought they had passed it. I remember voting on it.

Senator PRYOR. I believe it's been presented three or four times and it's never made it through the House.

Senator COCHRAN. Is that it? I remember voting on it two or three times. I voted for it.

Senator PRYOR. I vote for it every time it comes up.

Mr. MARXMAN. One other difference, as I understand it, is that Senator Dole's bill is effective from the date of its enactment.

Senator COCHRAN. And then continues.

Mr. MARXMAN. Yes, sir.

Senator COCHRAN. Excuse me. And would not apply to Senator Pryor's bill, the previous problem.

Mr. MARXMAN. Yes, sir.

Senator COCHRAN. What he was trying to do was focus attention on the need to do something about problems that have existed since 1979 and have gone unattended.

Mr. MARXMAN. Yes, sir.

Senator COCHRAN. OK.

Of course, we will be hearing from some producers. I think at this point, I'll refrain from asking other questions and allow Senator Pryor and Senator Huddleston to ask questions they may have.

Senator Huddleston?

Senator HUDDLESTON. While I'm here a little late, I do want to commend Senator Pryor for taking the initiative in trying to address what is a substantial problem where it happens. I think Mr. Marxman may be accurate in the magnitude of bankruptcies, thank goodness. It's not that great except for those who happen to be affected by it. It's a total wipeout in many cases; and for those farmers it is a total contribution as the old story goes. We will hear about some specific cases in a few minutes, particularly one from Kentucky when Mr. Sprague gets here. Clearly we do have a situation that needs to be addressed in some way.

I know at this time, this is about as good an approach as we can come up with. It's good to get your views on it. I will read your entire statement, of course.[1]

Senator COCHRAN. Senator Pryor?

Senator PRYOR. Mr. Chairman, I would like to just respond very briefly to Mr. Marxman.

One, I strongly support Senator Dole's efforts in the bankruptcy area relative to the elevator situation. As I've said before, I've

[1] See p. 29 for the prepared statement of Senator Huddleston.

voted for that piece of legislation three or four times in the Senate. It seems to not make it through the House for some reason. So I do support that.

Two, I support most of the efforts that Mr. Marxman discussed with regard to USDA's efforts to give future guarantees and future help, let's say, safeguards, to those farmers and to the customers basically in the elevator bankruptcy situations. I think this is very progressive. I just wish we had had some of this legislation on the books at the time of the grain embargo announced in December 1979.

But basically, Mr. Chairman, Mr. Marxman's statement related only to future or prospective bankruptcy situations. I'm trying to look at the some 3,200 to 3,500, somewhere in that area, those farmers who as a result of no fault of their own, no negligence of their own, who in good faith stored their grain in these elevators and then lost it.

I would like to stress, too, that this, once again, is not an open-ended piece of legislation; it is not something that is going to be constantly in the outyears an obligation of USDA or the CCC. This piece of legislation basically addresses itself to the present, existing problems where our country needs to show good faith to farmers and make amends for a policy that resulted in many of them losing thousands and thousands of dollars through no fault of their own.

Relative to the minimum standards issue that Mr. Marxman has raised, I think in that particular area I would just like to say that I can only assume that under this legislation, and if it is not corrected, I think it could be very easily, I think that the Secretary of Agriculture would have, or should have, the authority to set the guidelines to insure that minimum standards are met. I think this is something we can discuss. I am certainly willing to try to work language where we would not let's say be rewarding those elevators who had not complied with existing law; but I think that is an area we can work out if we set our minds to it; and I certainly hope that we can.

Senator HUDDLESTON. May I inquire, Mr. Chairman, Is there a trend established as far as warehouse bankruptcies are concerned? Is it increasing in the last years?

Mr. MARXMAN. Well, as we have talked about and mentioned here, we cite a total of 37 in 1979; 37 in 1980; and then we refer to a total of 22 since January 1, 1981, to the present time.

Now, that 22 only includes insolvencies involving those houses that have an agreement with Commodity Credit Corporation. So I am not including that; I don't want to mislead you in that there are some that may very well not be even State licensed that could also have gone insolvent during that period of time.

So we really can't suggest that there is a trend and if we go back from 1979 we have to look at the number there; so I don't see that we are, you know, you see in the scale that it was just taking off and racing like that.

Senator HUDDLESTON. Do you have an estimate on those that are not licensed by you?

Mr. MARXMAN. No, sir, I do not. The USDA does not keep any records on those that are either State licensed or don't have agreement with us or not licensed at all.

Senator HUDDLESTON. If Senator Pryor's bill were in effect and with the PIK program, would there be any problem with sufficient CCC stocks to fulfill his requirement?

Mr. MARXMAN. Yes; there is a potential problem there, except he has indicated that he allows for substitution; that we could substitute a different commodity if we didn't have the specific commodity.

At this point, it is difficult for me to suggest that I know what our inventory figures are actually going to be after PIK is over.

Senator HUDDLESTON. If it doesn't start raining, the situation may be more serious.

Thank you, Mr. Chairman.

Senator COCHRAN. Thank you, Senator Huddleston, Senator Pryor.

I appreciate your being here, Mr. Marxman, and giving us the benefit of your thoughts and the Department's views on the legislation.

If you could stay and answer questions that come up in the course of the discussion with other witnesses, we would appreciate it.

Senator PRYOR. Mr. Chairman, I would also like to request that we leave the record open at least for 3 or 4 days. I may have, and probably will have, some questions in writing for the Department.

Senator COCHRAN. We will be most happy to.

Senator PRYOR. Would you be able to respond to those in written form?

Mr. MARXMAN. Sure. We thank you for that.

[Questions submitted by Senator Pryor to Mr. Marxman and answers thereto:]

Question 1. In your prepared testimony you state the steps the USDA has taken to prevent future bankruptcies. However, the only part of your statement directly relating to S. 596 begins on page 3. You are of the opinion that a new bureaucracy would be required and that the paperwork would create problems for the existing ASCS structure.

Why would this be a problem given the smaller number of people who have sustained losses? Also, since we already have the PIK program, won't ASCS personnel be familiar with forms, etc. needed to carry out this program? Finally, why do you believe additional personnel will be needed to carry out this program?

Answer. ASCS personnel are already fully utilized administering current programs. The already existing forms for the PIK program could not be used for the program proposed in S. 596. Though the number of persons benefiting from this proposed program is small, those persons tend to be located in a few counties surrounding bankrupt elevator facilities. Thus, the burden of administering this program would fall on a few county offices rather than broadly across the entire ASCS organization.

Question 2. Another reason for your opposition is that in some way it would reward mismanagement on the part of elevator operators and would not act as an incentive for farmers to patronize efficient warehouses.

Please explain your reasons in some detail. It seems that first, we are only rewarding a farmer who has lost the crop (and under this bill he must even agree to repay the grain loss) and secondly, your argument seems to indicate that a farmer would choose to go to an inefficient warehouse if he knew this program were in place.

Would you still be opposed if a subrogation clause were inserted into the bill which provided that the U.S. Government could step into the shoes of the farmer who receives the loan under this bill?

Answer. Federal programs which tend to insure producers against losses in grain elevator bankruptcies tend to reduce incentives to exercise caution. We certainly do not wish to imply that the proposed program would cause farmers to choose ineff-

cient elevators. Rather we prefer programs which would encourage producers to seek out well managed elevators. We do not feel that S. 596 would encourage producers to do this. While inclusion of a subrogation clause is a good idea, its inclusion would not change our position on the bill.

Question 3. Since this bill is for a definite period—from the date of the 1980 embargo until the date of enactment—the argument that it is openended is not valid. Also, since only about three to four thousand farmers are affected by these bankruptcies, why not loan them the grain? The net cost to the government over time will be negligible, it will reduce storage costs, and will allow them to stay in business. Would you still be opposed to this bill if it contained a provision for repayment with interest?

Answer. While we sympathize with the plight of producers who have sustained losses as the consequences of grain elevator bankruptcies, we do not agree that the 1980 embargo was an important factor in those bankruptcies. Much more important are the factors listed in earlier testimony. The premise that the government caused the plight of these producers and should now make reparation is not valid.

We would still oppose S. 596, even if it provided for interest payments on the loans because of the administration difficulties involved. A loan program providing cash would likely be cheaper to administer than the in-kind program proposed in S. 596.

Question 4. What are the existing government-owned stocks of wheat, corn, cotton and rice? How much wheat and corn is in the farmer-owned reserve? What is the best estimate as to government-owned soybean stocks at the end of this year?

Answer. All wheat, cotton, and rice stocks, owned by CCC, are committed for the PIK program and other purposes. There are 240 million bushels of uncommitted CCC-owned corn. There are 2,446 million bushels and 891 million bushels of corn and wheat, respectively, in the farmer-owned reserve. CCC-owned soybean stocks are currently about 18 million bushels; no estimate of year-ending stocks is available at the present time.

Question 5. Since one of the arguments against the bill might be that there is not enough of a particular commodity to loan, won't the language allowing the Secretary to substitute crops be sufficient to solve this problem?

Answer. There are several problems with substituting commodities. CCC might have to ship them long distances to comply with S. 596. Further, some producers may not be set up to receive substitute commodities.

Question 6. If this substitution language is not sufficient, couldn't the bill be amended to allow farmers to plant for this program, just as they are having to plant-for-PIK at the present time?

Answer. Allowing farmers to plant for the proposed program would not be cost effective for the small group involved. Moreover, it would tend to encourage production, countrary to the objectives of PIK.

Senator COCHRAN. Next, we have a panel of witnesses which we would invite to come forward now, including Steve Bernard, from Hughes, Ark.; Rodney Eaker, from Harvill, Mo.; and William Sprague, from Kentucky, first vice president, Kentucky Farm Bureau Federation, at Sturgis, Ky.

If you would just sit along here.

We will ask Mr. Bernard to start but each of you should give a statement to the committee about your views on the legislation. After each of you have made your statement, we will have a chance to ask you questions.

Senator PRYOR. Mr. Chairman, before Steve testifies, I would like to say something.

I think looking across the table at Steve Bernard indicates to me—it just shows you what one man or one person in our country can do, if they not only believe in their cause but have a good cause. Steve almost single-handedly has started this movement; I don't know how much money he's spent, but he has been out on his own; he has been really representing hundreds of farmers across the country in bringing this idea to our attention.

I've worked very closely with Steve and his group and he has just really done an outstanding job on it; and he has certainly educated me on it, or he tried to; he has done a fine job.

STATEMENT OF STEVE BERNARD, HUGHES, ARK.

Mr. BERNARD. I appreciate that. But you would be surprised what a $150,000 loss will make a person do. [Laughter.]

I do appreciate being here today, Senator Pryor and Senator Huddleston; and to you, Senator Pryor, we appreciate your efforts.

The first thing that I'd like to point out, I think there seems to be some confusion about this. This is not intended as a preventative measure for future bankruptcies, elevator bankruptcies. This is a one-time only basis; it is intended to keep farmers in business that have experienced losses since December 1, 1979, up until the present.

The majority of the farmers that have lost money on these elevators are not the ones that Ward Sinclair addressed this morning in the Washington Post; those that are the big boys from all over the country. These are the 500-acre, the 1,000- and the 2,000-acre farmers; and they are the family-size farms, the very ones that we are trying to keep in business. They are the ones that mean a lot to the communities back home; they are not corporate bonds, owned by some big corporation in the east that are farming in Mississippi or Louisiana or Arkansas or California; but they are owned by the farmers that are there. If they were the big corporate farmers, they wouldn't have been caught in this trap in the first place, because they probably would have either owned the terminal elevator or had enough storage on their own farm that they would have been protected.

Now, in an elevator operation, it is true that an embargo should have no effect whatsoever on an elevator operation. If the man running the elevator does what s right he should either be hedged or he should be sold when he buys grain. But unfortunately, we have been in what we call a bull market for a number of years, and it goes back to what Mr. Marxman said; that it was a degree of mismanagement and we are not trying to cover up for the mismanagement. These people had bought grain from the farmers. You can also go broke not doing that in the elevator business; you can let grain go out of condition for a number of reasons. The barge can sink. But a lot of things can happen. But that's not what happened.

These people unfortunately had bought some grain from some farmers in our particular case; had not hedged; had not sold; and it was rumored in the newspapers and in the media that there would probably be another famous grain embargo put on but evidently some of the elevator operators didn't believe it and I'm saying that they probably were out of balance, and had bought grain and didn't have it hedged and didn't have it sold; and on a Friday, President Carter did put on the Russian grain embargo and you know what happened: Some grain prices dropped some dollar a bushel or better, the basis spread out, so the man said, goodness, gracious, I bought a half a million bushels of soybeans over the weekend; they put the embargo on Friday night; what am I going to do on

Monday morning. I don't have the money to pay for beans at $8 a bushel, $4 million. So he sells some of the other man's beans to get the money to pay for it or either he buys it on the board. And that's what happened in a lot of cases.

So whether we want to admit it or not, this embargo has changed a lot of the farming practices, our marketing practices in the country and it did have an effect on the elevator failures; there is no question about it.

Now, what we are proposing is a grain loan concept; I understand it's unique, but it looks to me like it's so simple; it's so easy to enact; it helps so many people; it doesn't affect the budget one way or the other; it's so scary, I just wonder really if it's going to pass. I think it's good.

This is grain—back to Mr. Marxman's question about whether it's a supply of grain—on July 20 there was a little over 20 million bushels of soybeans owned by the CCC that had been through the grain forfeit, through loan forfeits.

This program—if every person that I have a list of, which is some 3,500 farmers and I have written most all of them, from the State of Washington all the way to Hartford, Conn., and down to Texas, and so forth—if every farmer were to receive grain to pay for his loss—we are not talking about the $25 million.

Now, everybody is not going to participate in this program because if I had lost $2,000 or $3,000 or even $5,000, I would consider myself a winner and go home happy. But in my case, where I have lost over $100,000, I can't go home happy, because 12, 13, 14 percent interest for the last 3 years, and it's just been—with droughts and—we haven't been able to make enough money in the last 3 years to pay back our production cost, much less to reduce the hundred and some thousand dollar loss that we have had from this grain program.

We are not asking Uncle Sam to—we started out doing this; we started out with a grant idea, we did—but the more we thought about it, the more people I talked to after sending out some 4,000 letters, and getting a lot of feedback back, from farmers—I didn't write lawyers; I didn't write—I did write a few organizations, but most of them were farmers—we are not asking for any kind of a free bailout. We are agreeable to pay the grain back. Example: A man has lost $60,000. Soybeans today are worth $6; he would be offered—he doesn't have to take it; he has to show proof of his loss and he would be offered—10,000 bushels of soybeans, $6, $60,000. He sells the $60,000 worth of soybeans, pays off the FHA, the PCA, the bank and the suppliers, and only a few people that the suppliers and a lot of the lending institutions have bent over backwards for this group of farmers in the last 3 years; and they have got a lot of suppliers strung out on a limb; I know some that owe in excess of $100,000 to some suppliers; and then we--well, let's don't debate PIK, but coming along in some of their business is hurt, so they have hung in there with a $100,000 bill that some of the farmers owe them and their business is off considerably this year—but these people have been good to farmers; and without this bill, or some other miracle, you can believe me that the FHA and the PCA's and a lot of the suppliers will never be repaid. These people can't pay these debts.

You've lost $400,000 and you have had interest added to it for 3 years at 15 percent, you can figure it up, 15 by three is 45 percent, and 45 percent of $400,000 is another $200,000 to add to it. He owes $600,000. And next year, he owes 12 or 13 more percent on that. You just can't continue going. And we are—the light at the end of the tunnel I think is a trade we thought we could see.

But this, the FHA, I think this is one of the best ways I have ever seen to move surplus grain, in this case, soybeans, into the producer's hands, allow him to sell it and get the money back into FHA's tills. Let's pay these people back. Then they would have 10 years—we want to give them 10 years—in this case, it was 10,000 bushels of soybeans, the farmer pays back a thousand bushels of soybeans a year for 10 years until it's paid back. We would like to see some type of a price fluctuation included in that. You get them at $6; he doesn't want to pay them back at $9 in 6 or 7 years, but we would like to see it fixed to where if it went up 10 percent, that would still be all right; the same amount of that back. If it's down ten percent, you pay the same amount back, and anything above that, we would adjust the total number of bushels.

But, I don't mean to rant. I can slow down here. I am about to get over my time, really.

But these soybeans or grain, whatever, would be paid back to a warehouse with the uniform grain storage agreement or a Federal warehouse.

Now, of course, there's a lot of talk going around, and as Mr. Marxman said, you know, it'd all be nice if we could do business with a house that either had a uniform grain storage agreement or a Federal license. But in some cases, you might have to drive 500 miles with your grain to get to one of those houses; and talk about being protected to the amount of the loan, that's something that has just surfaced since the failures started, and I want it to be made a part of the record that all of these elevators for sale were not people that just jumped up and put a sign out and said they were in the grain business. The man I was doing business with I've been playing tennis with for 15 years. In his case, he goes to church with them every day; they have known him for 20 years. So these are not fly-by-night people.

And a lot of them did have a uniform grain storage agreement and a Federal license, so they weren't just bad guys off the streets.

I don't—we have got people—I had a lady contact me yesterday morning; she didn't know I was coming to Washington; before I left, and I told her to come in; she said, be sure, and I hope you can do something, because the FHA has already given us notice they are ready for us to sell our equipment and to move out of our house. Now, this, you know, it's bad to go broke, but when you're a bankruptcy or you're a failure, it's not the result of your own actions, it really gets next to you.

And we didn't come up here with our hats behind us, asking for you to give us anything. We are asking for a grain loan. If we can use the grain, it can be done, but if we see it given all to foreign countries, I don't see why we couldn't at least lend it to the people that produce it. As a matter of fact, I think it might be a good way to finance the people instead of having to borrow money to put back into FHA's till down through the future years.

That's all I've got to say.
Senator COCHRAN. OK.
Thank you very much, Mr. Bernard.
Rodney Eaker. Is that the way you pronounce that?
Mr. EAKER. "Acre."
Senator COCHRAN. "Acre."

STATEMENT OF RODNEY EAKER, HARVILL, MO.

Mr. EAKER. Well, I really don't have a whole lot to say, Mr. Chairman, but the reason I'm here is because we have suffered a loss of 62,000 bushel of rice, and I farm with my uncle and we farm approximately 2,200 acres, and if you take a loss of 62,000 bushel out of an operation, a family operation, you have just about wiped everything out.

We lost 62,000 bushel; that represented two-thirds of our production in that year; and if we don't have some long-term help, there's no way for us to overcome it; and we've already been told by our PCA that if we can't show sufficient progress this year that we are going to have to do something else and probably will be sold out. That's about all I have to say.

Senator HUDDLESTON. What's the value of that 62,000 bushels?

Mr. EAKER. Well, approximately $5 a bushel, so you are talking about $300,000.

Senator HUDDLESTON. That'd sure take all my petty cash. [Laughter.]

Senator PRYOR. Let me ask this, if I might, Mr. Chairman: Is the matter of say the loss of rice in your case and the bankruptcy situation there in your area—you're from Missouri, I believe——

Mr. EAKER. Yes.

Senator PRYOR. Now, is that in bankruptcy court at this time?

Mr. EAKER. No, sir; it's not in bankruptcy court yet. It's just been foreclosed on.

Senator PRYOR. But there's been no distribution whatsoever?

Mr. EAKER. The bank wound up with all the security.

Senator PRYOR. I see.

May I ask Steve a question here?

Senator COCHRAN. Mr. Sprague, why don't we just hear your statement. Let's have Mr. Sprague testify and then we will have an opportunity to question the witnesses.

Senator PRYOR. Good. Very good.

Senator COCHRAN. Go ahead, Mr. Sprague.

STATEMENT OF WILLIAM R. SPRAGUE, STURGIS, KY.

Mr. SPRAGUE. Thank you, Senator.

Again, we are very appreciative that we can come before this committee and discuss this problem. It's like Senator Huddleston said there: I've heard of bankruptcies all my life and it really didn't even lead to a second thought but when a check comes back from the elevator and it bounces, and then the next thing you know, they're going into chapter XI, you suddenly become a real expert on bankruptcies. This is what happened in our area.

We are located in a grain producing area of western Kentucky. A large grain elevator that has been in business for 20 or 30 years

suddenly started bouncing checks and closed their doors and it caught about 100 farmers, 125 farmers, in pretty bad straits.

You look back as an individual and say, well, I was stupid to get caught in this situation. It was an error made in following our normal marketing channels, where we would store grain or take it there for deferred pricing, and then settle on a price at a later date. We had done this for years with no problem. So we could plead ignorance to a small degree; but yet we have to accept the responsibility of making some bad judgments in this case.

But having suffered a financial loss, it's very difficult to overcome these losses. Farming is in a real tight strait, and you are lucky to make your expenses back, much less to overcome a complete loss of your crop. And this has put some farmers in our area in a really bad situation.

I think most of them are making it because of the lending institutions, and their suppliers have agreed to go along with them another year. One of the reasons that the banks and the credit institutions haven't closed in is because land values have just about halved in value and they realize that maybe we could hang on another year, and get some of these assets out.

So even though we haven't seen a wholesale closing down of farmers in our area, it's on the verge there; it's very precarious. Hopefully, it's a new year and we can overcome this.

Mr. Bernard has proven a point in this country where an individual does have something to say in government. I think farmers in our area and around seem to think there's nothing government will do. We become leery of your action and especially concerned about the slowness of the way that things get done. I will have to commend Mr. Bernard's bulldog approach to this thing. He has stayed right with it.

When he first contacted us about the concept of giving PIK grain to farmers who had lost grain in an elevator bankruptcy, it didn't really hit me very well because as a farmer and a free-enterprise man, I have a hard time accepting gifts. I didn't really like that idea at all. I think this is contrary to the way farmers—well, we worked for what we've got and we believe in hard work and getting returns for it; and so we really didn't get real excited about Mr. Bernard's first approach to this bill.

But then when he came back and talked about changing it and making it a loan, we got very interested in this. We would like to support this because we think it makes a lot of good sense.

Commodity Credit grain could be given to these farmers as a loan; it would give them a chance to make up this sudden crash that fell on their heads. It would give them a period of 10 years to overcome these losses. We think this is a good approach, and we would surely like to see this legislation enacted.

We are sorry to see that our own supporters, the people up here representing us, the USDA, sort of against this thing.

Now, we understand some of their concerns, and I think a lot of them could be alleviated with some of the experiences they are learning in the PIK program. I can see the administration's headaches that are caused by the transferring of grain around the country. So we are hopeful this approach could be worked out where you wouldn't have to ever move any grain. A farmer could receive

the paper receipts for the grain and solve some of these horrendous problems that the USDA is getting into moving all this PIK grain around.

So we think this bill is a good approach; we think it is an approach that makes a lot of sense. It will help these farmers that are in bad financial trouble overcome their losses. They were already overextended. This bill would help to relieve that.

We also are very supportive of the work that the Senate has done on future bankruptcy problems. And I would like to say this is some legislation that is long overdue. Our bankruptcy has been now about 16 months, and other than a bunch of lawyers getting something out of it, I don't think—I know no farmer has received a thing. The lawyers do have ways of getting their fees, it seems like. And it looks like that probably the lawyers are going to end up getting about as much as the farmers by the time this thing is settled.

Senator HUDDLESTON. They don't have to take it in grain, do they? [Laughter.]

Mr. SPRAGUE. They get it right off the top. So many provisions of this bill that the Senate has passed, I think, will be very useful to farmers, and we do commend you for taking that action.

The point is that we think from the future on, farmers now are more aware of the situation; we will take the responsibility of dealing with our elevators; we have become educated a little bit.

Up until this time, it really wasn't much of a problem. Farmers weren't aware of the real problems with elevators; we didn't realize all these people that have liens on our grain that were ahead of us in bankruptcy cases. I think USDA now is doing a real good job of getting out information to farmers. The extension services and we in Farm Bureaus work real hard to educate our farmers on who's got liens on their grain.

But up until this time, we weren't aware of that. And then the Russian embargo was put in place. I think we can build a good case for taking this time period here and helping farmers in this area. We wouldn't propose this as an open-ended deal in anyway, because we realize that farmers and grain elevators must take the responsibility for dealing in these times.

So we would support this bill especially in the time frame between the embargo and the present time.

So we are hopeful that the Senate and the Congress here could take positive action on this measure.

Thank you.

Senator COCHRAN. Thank you, Mr. Sprague.

Just let me get this straight now.

I know that Mr. Bernard says that his loss occurred in the aftermath of the Russian grain embargo; is that right? In 1979?

Mr. BERNARD. It would have to be 1980.

Senator COCHRAN. 1980.

Mr. BERNARD. That started—that was the first domino that fell, was along in there, about.

Senator COCHRAN. What about you, Mr. Eaker? When was the loss that especially affected you?

Mr. EAKER. We sustained a loss in 1982, but it was our 1981 crop that we lost.

Senator COCHRAN. I see.

What was the cause of that, if you know?

Mr. EAKER. Well, really, nobody really knows yet. It is just bad management on the elevator's part and the manager of the elevator, I suppose.

Senator COCHRAN. And the loss you referred to occurred last year?

Mr. SPRAGUE. In March 1982.

It is two sides to that story. The elevator operators claim they had some corn sales made to Venezuela, white corn, and specialty crops that carries a dollar premium on yellow corn; so when they made—they made these sales in good faith to Venezuela, a Venezuela organization; they refused shipment on it, so they were stuck with huge amounts of grain; they were a dollar over the normal marketing channels. But then it is quite obvious from all the—after investigations there were a lot of poor managements and we feel some criminal action in there, too. If we can—we can't get the lawyers to move on that, though.

Senator HUDDLESTON. Bill, what kind of grain was involved in that?

Mr. SPRAGUE. It was corn, soybeans, and wheat.

Senator HUDDLESTON. Corn, soybeans, and wheat.

And yours was rice. Was it rice only?

Mr. EAKER. Yes, sir.

Mr. SPRAGUE. Soybeans and wheat and no rice.

Senator COCHRAN. Senator Pryor.

Senator PRYOR. Mr. Chairman, I apologized earlier this morning to our panel for having to leave at 10:30, and I do have to leave; and I am very sorry. But I think that the testimony that we have heard today is really from grass roots America out there, from farmers who have experienced it firsthand. And I would like to thank the three panel members for coming; I think it's been very good testimony, solid testimony. The thread I get through their testimony as a result of it is that they are not up here, as Mr. Bernard said, with their hats in their hands and asking for some free gratis sort of a gift. They are not doing that.

They are here asking for something that is very simple and I think very logical and very reasonable and justified. We find that we do have many programs throughout our whole government structure where we give food away in many instances; we give it away under one section of Public Law 480; we actually give food away to other countries. The other section of Public Law 480 is certainly advantageous, an advantageous situation for our farmers, as it is for the recipient countries, and so forth.

So, we give food in many instances to other countries in disaster situations. We do this constantly. It is sort of the spirit of this whole country and what it's all about and I just think it's also in keeping with what this country is all about to recognize the problem caused by a Government policy.

Finally, Mr. Chairman, even to discuss an embargo today gives me cold shivers. The 1980 embargo was devastating and this bill seeks to correct something which I believe was caused by the embargo.

I am just very hopeful, Mr. Chairman, the committee will look favorably on this bill; I do hate to go and, once again, thanks to you and Senator Huddleston and the distinguished panel.

Senator COCHRAN. Thank you, Senator, for being here, and for your leadership in this area.

Senator PRYOR. And I will have some questions perhaps for the Department's people, and we will submit those if possible.

Senator COCHRAN. We will be sure that they are submitted, and made a part of the record.

Senator PRYOR. Thank you.

Senator COCHRAN. Senator Huddleston?

Senator HUDDLESTON. Well, let me ask these gentlemen about the pay back over a 10-year period.

Do you see that as any problem for the farmer? And what would happen if during that 10 years you were to in fact go out of business, either voluntarily or otherwise?

Mr. BERNARD. Senator Huddleston, I think that's probably—you know, we are going to be realistic here—I think if we got 3,200 farmers—3,500 farmers that suffered a loss, I think we probably have 2,800 or 2,500 that would probably participate in this program, and I wouldn't say that 10 percent of them would go out of business; but I would expect that there will be—that would be—when they asked Mr. Marxman about the cost a minute ago, I think that's where the cost would come in.

Senator HUDDLESTON. But you would have some defaults in the long run?

Mr. BERNARD. I think you probably would have some; don't you think so?

Senator HUDDLESTON. You would have to count on some?

Mr. BERNARD. Yes.

However, you know, that could be offset by the storage if we took 5 million bushels of soybeans to fund this entire program, and if they are paying 30 cents a bushel a month, 12 months, 36 cents; if they are paying 40 cents a bushel to keep them stored somewhere, 40 percent of 5 million is $2 million a year it would cost them to keep them stored somewhere; so I doubt that your losses would exceed the storage. So I don't think, still don't think we would be out any additional money.

Mr. SPRAGUE. I would think that we would be willing to support good business practices of the Department coming up with some type of a lien on the farmer's growing crop or his land or—they would have to get down pretty low on the list probably; they would have to get several liens against most farmers, but they could get in line maybe.

Mr. BERNARD. I talked with the PCA's and the banks at home about this, and, you know, the bankers—if I was on that side of the desk, I would want the outright grant, too. But they will go along with this.

Senator HUDDLESTON. Is this because a participating farmer would produce more during that 10-year period than he might otherwise in order to have that portion that he would pay back and therefore increase the total supply of grain during that period of time?

Mr. BERNARD. Would it cause him to produce more? Will he have to produce more?

Senator HUDDLESTON. Yes.

Would he be likely to, I mean?

Mr. BERNARD. Well, possibly it could. His whole attitude is going to change.

Mr. SPRAGUE. Yes, Senator, I think that's one of the real paradoxes of what we are in right now. We are at the point of finding where to meet our total obligation, we need to run at full production as we can go, and that is not exactly what we need to be doing; we need to be cutting back and I don't know the answer to that problem either, how we can do that.

Senator HUDDLESTON. Yes.

But on the other hand, if he doesn't have a program like this and he tries to stay in and he tries to recover that loss he is probably going to produce even more.

Mr. BERNARD. Yes.

Senator HUDDLESTON. He is going to have to.

Mr. BERNARD. Right.

You just can't stay in business—I don't—we can see a wholesale failure next year or so, if this doesn't come about.

Mr. SPRAGUE. I think it's true the point I was trying to make, that even though we haven't seen any right in our area. But I know some cases where the only reason that they haven't sold, they told us they will need to sell his ground to try to recover some of his debts, but they know the land prices are—we have had some auctions down there where we didn't even have any bidders. So land prices are not there. If agriculture and the economy can get turned around, I think we will see some people selling off assets to meet some of the debt requirements.

Mr. BERNARD. The biggest loss that I have seen out of all the people that I have contacted was out of Texas, and the only loss I have seen was in excess of a million dollars and it was by a thing called the American Rice Growers Cooperative Dayton Division, out of Dayton, Tex., where they have done business—they are a cooperative and they in turn have done business with another thing in Louisiana, in Lake Charles, I think.

But most of these losses were from $500,000 on down. Most of them were $100,000, $150,000, and really, ordinarily a $100,000 loss probably shouldn't put a fellow out of business, but unfortunately, the last 3 years, it has been such that it almost has because of the interest you've had to pay, you can barely make production costs at that.

Mr. SPRAGUE. The—I see some people shaking their heads. Why? Why that is, why farmers have been able to do that is their land values have been increasing at such a rate that bankers and lending institutions would gladly go in and you could up your loans, you know, $50,000 or $60,000, just on the increased value of your assets. And that has gone the other way now, and so when you go in to your banker or PCA to request more funds, you don't have the backup there to get it.

Senator HUDDLESTON. Collateral values?

Mr. SPRAGUE. The collateral is not there.

Senator HUDDLESTON. They are changing very rapidly.

Mr. SPRAGUE. Right.

Mr. BERNARD. This is the kind of program that we need more of in Government, where we are not asking for a grant or a check to be written or money to be borrowed by the Government for funds when it's going to be repaid and it's really the cost—it's not going to take—no other personnel will have to be added to administer the program; it can be handled—it is so widespread from Washington to the Carolinas that it can be handled through the ASCS office; the warehouse—if it is enacted, the farmer goes into the ASCS office with his record substantiating his loss, and then he applies for the warehouse receipts of *x* amount of grain or *x* dollars worth of grain; it can be issued at any time. He says, well, look, we have got soybeans stored in Keokuk, Iowa, so he is issued warehouse receipts for 10,000 bushels of grain in Keokuk, Iowa; he calls up the warehouse up there and sells them. We are not asking them to load them on a truck or on the train, a boat or plane and move them to us. We will sell them right where they are.

Then the next year when that time comes, we will deliver 1,000 bushels, or one-tenth, a pro rata share, to the United States to the uniform grain storage warehouse with that agreement or a Federal house, warehouse receipt will be issued in the name of the CCC, and they have got—the grain starts coming back to them in 1 year.

I don't see where the administration of the program is going to require any—looks like to me a busload of employees can handle the whole thing, or a taxicab full.

Senator HUDDLESTON. It looks to me like from a bookkeeping standpoint there would not be a significant problem. Of course, we keep books in a strange way sometime in Government. But from the CCC standpoint, you don't change the situation; and as I say if you have got an asset, you change it from one of commodities "in hand" to an account receivable. It's still an asset. Of course, you would have a small percentage of defaults that would be out there. But other than that, from a balance sheet viewpoint, you should be exactly in the same position until you actually do suffer a default and loss of some kind. Steve says, if you save a little storage, that would give you a little cushion to work with; but it should be almost a no-cost program.

Mr. BERNARD. In the case of soybeans, I think they trigger their release. If we stay in this new-found bull market and I think when I was up here before I was dealing with Ron Wilson and we had 22 or 23 million bushels of beans then and the CCC owned beans and now it's down to 20 million bushels. So if the price goes on up before this bill is enacted, we could conceivably have a few more soybeans to move out of the CCC, but I think that's enough beans right there to fund the entire program; I think it would be simpler if it were funded in the same commodity.

Now, you have got—you might have a problem with this in that let's take, for instance, out in my county they don't raise soybeans; you know, they raise wheat. So they receive soybeans in Iowa and you have got some people out there, they are going to have to pay it back, but they will have to pay theirs back in grain, in wheat, that's equal to the value of what the soybeans were, I assume. That's what I'm saying. So repayment could be made in other grains.

Senator HUDDLESTON. I believe as the bill is written it provides that payment to the farmer be in one lump sum disbursement.

Is there any reason or any advantage to making the payment itself over maybe a 3-year period?

Mr. BERNARD. You mean to the farmer?

Senator HUDDLESTON. To the farmer. Yes.

Mr. BERNARD. Well, I think it needs to be made now.

Senator HUDDLESTON. At one time?

Mr. BERNARD. Yes, sir. So we can stop some interest right quick. You know, you got the meter running on all of us and it's really eating us up.

Senator COCHRAN. Let me ask you this:

In your communication with farmers around the country about this problem, as you recall, have you found any who have been entitled to any kind of partial distribution or pro rata payment out of the bankruptcy proceedings or insurance proceeds or any other kind of compensation that partially compensates them for their loss?

Mr. BERNARD. Coast Trading Co.—I know the man that is in charge of the creditors committee out in Helena, Mont., and a farmer or two; and they tell me they are going to receive between 9 and 15 cents on the dollar.

Senator COCHRAN. Now, in cases like that, would it be your recommendation that that be taken into account so they wouldn't qualify for a loan representing their total loss, but only such allowance that is not reimbursable from some other source, whether it be insurance or whether it——

Mr. BERNARD. I think that's fine.

Senator COCHRAN. Whether it be a partial distribution out of the bankruptcy proceeding.

Mr. BERNARD. What is it, 20 cents on the dollar?

Mr. SPRAGUE. Yes. They are 20 to 25 cents on the dollar, projecting that. With assets that they know of.

Mr. BERNARD. You know, Senator Cochran, take a small bankruptcy, $1 million bankruptcy, an elevator goes bankrupt like one or two of these places in Tennessee and Arkansas, and I know of one case where there was $1 million paid out—what do you call it, preferred people, those 90-day people, preferred——

Senator COCHRAN. Preferred creditors.

Mr. BERNARD. Preferred creditors. They got their $1 million and there was $1 million owed, we will say, to make an easy figuring at the end of the bankruptcy; and if this thing is pushed on into the bankruptcy and this $1 million has to come back, then as we discussed, the lawyers, the courts, trustees, and so forth, get their fees out of it, instead of this group losing 100 percent and this—getting all of this, you wind up that neither one of them get over about 20 percent or 15 percent of their total. So rather than having just a $1 million worth of bankruptcies, you wind up with another group of people.

When this one particular bankruptcy happened, I know they had some people from the FHA to come down and they met with them and they offered, the FHA, a first mortgage on the facilities, the land, and pro rata endorsements from all of the preferred creditors, the haves and the have nots, all offered to endorse the note. These

are a group of farmers that would take two legal pads to write their names. They were all going to endorse the note. This bankruptcy, this particular one, would have never occurred. It wouldn't have gone another—it would have been over in 2 weeks time, but the FHA couldn't make that loan with all that strength on it. So that's——

Senator HUDDLESTON. Now, if you had this plan in effect I assume then the farmer would release any claim that he had against the warehouse, which would in turn strengthen all the other claims against that warehouse. The plan would make it easier for the farmer and it really would benefit a lot of people, probably, as you say, that had other legitimate claims against them.

Mr. BERNARD. Right. But in the case in Kentucky, as Mr. Ballard, the State of Kentucky, expressed that, he—you know, we are going to go with you on this thing; but we don't want these people to get off scot-free if there has been any criminal action. We want them to be prosecuted.

Senator HUDDLESTON. Oh, sure. Yes.

Mr. SPRAGUE. Or you could sign your lien against the bankruptcy to the Commodity Credit or something like that.

Mr. BERNARD. That's what he wanted.

Senator HUDDLESTON. Yes.

Mr. SPRAGUE. Let the Commodity Credit take over your position in the bankruptcy.

Mr. BERNARD. You know, if they really wanted, to the CCC.

Senator COCHRAN. Would there be any obligation to pay interest to the Government on the loan of the grain over that 10-year period? How would you recommend that be handled?

Mr. BERNARD. I wouldn't recommend it be handled. [Laughter.]

If we have got to pay 12 to 15 percent interest, we might as well go broke the way we are, you know? I mean——

Senator COCHRAN. So your recommendation would be for there not to be an obligation for interest?

Senator HUDDLESTON. Well, it doesn't seem to me there ought to be any reason to. They are not getting any interest on their wheat that they now have stored. I mean, it's just there unless they do something with it.

Senator COCHRAN. Well, the presumption is that the farmer, after obtaining the loan; say in the case of Mr. Eaker, he would get 62,000 bushels of rice, would probably sell the product.

Mr. EAKER. And pay off the creditors.

Senator COCHRAN. And then start paying back the——

Mr. EAKER. And then start putting it back over the 10-year period. This is what we need. We need some time to get this thing worked out, because you can't handle a $300,000 loss in 1 year. Possibly you can over a 10-year period.

Senator COCHRAN. Do you anticipate recovering anything in the bankruptcy proceeding that you are involved in?

Mr. EAKER. As it stands right now, no. There doesn't seem to be any hope at all. Something could happen in the future, I suppose. But it doesn't look like we are going to get anything.

Senator HUDDLESTON. I don't see how it could have any adverse effect on the CCC unless there was in fact an absolute shortage of

that commodity and the CCC then had to go and buy that commodity to carry out the PIK program.

Mr. EAKER. Yes.

Senator HUDDLESTON. And it would of course force CCC to go out and spend some money.

But we are not talking about that kind of volume, I don't think, are we?

Mr. BERNARD. We are talking about a total of over—I keep referring to soybeans because I think it's simpler if I do it that way—4 or 5 million bushels of soybeans, Senator Cochran, to fund to entire program. We have got— there are producers in Mississippi that got 20,000 acres of soybeans for $50; that's $1 million. We have got producers that make that much, so that's not going to flood the market or have an adverse effect on the market. They are not all going to be sold the same day. I think that when the farmer receives the warehouse receipts he probably should be given 30 days or 45 days of free storage and at that time if he doesn't want to sell it——

Senator COCHRAN. He has to pay the storage from then on.

Mr. BERNARD. But he's going to have to sell them. I don't know anybody—I haven't run across anybody yet that can hold them too long.

Senator COCHRAN. Well, this is a very interesting concept, and I certainly think that it deserves the careful consideration of the subcommittee. We have been wrestling with this bankruptcy thing now it seems like for way too long. As I say, Senator Dole came up with legislation that he recommended and that the Senate has approved and I don't know why it can't get through the whole Congress and get signed into law so that we will have these additional protections built into the system for farmers.

Under the current priority lineup, the farmer who has his grain in an elevator with a warehouse receipt indicating ownership of it, how far down the line does he stand, right now, given the way the bankruptcy law is structured? In the event of a bankruptcy, where are you in the priority for preferred creditors?

Mr. BERNARD. Well, that's real interesting. I say again that we say we know so much, but maybe we don't, because I notice in the *Walkland Grain Elevator* case in Kentucky, those people I think—I assume they had a warehouse receipt, I don't know—but Harris Bank in Chicago actually had a first mortgage on all the grain that was in the warehouse that was stored, still owned by the farmer. So I don't know where we stand.

Mr. SPRAGUE. Of course, it's——

Mr. BERNARD. It's farmer-owned grain.

Mr. SPRAGUE. That's why we have to get down to a definition of what's what.

In our case, we were storing grain at the elevator. We assumed we were storing grain at the elevator. The operator called in storage; he charged us a storage fee but he had a little sign right back behind his office that said: Anything that crosses this scale is assumed sold to the elevator. So with that he was taking ownership of the grain and immediately taking a lien on it from the Harris Bank; so you were in a position of just a creditor; you were just loaning the money.

Senator HUDDLESTON. With a second mortgage.

Mr. SPRAGUE. Yes. You were down the list. Yes. At least a second mortgage on the thing. So you were left behind.

So there is a terminology—if you have accredited warehouse receipt, then you're in good shape. But these elevator operators have learned not to give those unless you specifically request them, and then only federally licensed warehouses can give them anyway, so there's some real problems.

Senator HUDDLESTON. Steve, have you encountered any of the farmers who have received any kind of partial payment or any disbursement at all?

Mr. BERNARD. Yes.

I got one or two. I got a letter from a man that I know like out in Montana. He had his grain—had a CCC loan on it, on wheat, Commodity Credit loan; had it stored on his farm, so the price goes up above the loan which—and this happened in some other cases I see around the country: the price goes above the loan. So he says, well, I'll sell it now, because I've got some equity above the loan; so what you do, you contact the ASCS office to get their permission to give you a marketing organization or let you go ahead and market the grain, so they did.

And he moved; he contacted Coast Trading Co., one of their elevators, and moved the grain to them and acknowledges that there's a loan on it and he wants to sell it and we will say the money, first $10,000 or $50,000 goes to the Commodity Credit Corporation, and then above—either comes to him if he is clear of debt or to the crop. So he moves the grain to them; Coast at the time, starting their downfall—their bankruptcy failure was almost in motion, so they didn't pay the CCC people. They got the grain, sold the grain; he didn't get the money and the CCC didn't get the money, so now the Commodity Credit Corporation is filing suit against him for the money, even though he had permission from them to market the grain. That's what Mr. Marxman says the theory—you know the theory is right now that—I think it's good; I'm not arguing. It's probably the thing for us to do in the future. If we move grain to one of these warehouses, if you don't plan to sell it, rather than leave it in open storage, let's go ahead and put it in the loan; let's get us some insurance up to the amount of the loan. Do you see what I mean?

But they say it's supposed to be a nonrecourse loan, I believe is what they say, but that's really not what's happening because I know of several places where the Commodity Credit Corporation is going back on the farmer now for the money that they didn't get back from the grain. So I mean, what we are saying—what they are saying and what we are seeing done is two different things; or either I am not understanding. One. I don't know.

Senator HUDDLESTON. He has in fact lost his grain and he is left with a big debt to the CCC.

Mr. BERNARD. Right. To the CCC.

Senator HUDDLESTON. But in the case where there has been any kind of disbursement in a solvency case, insolvency case, a bankruptcy case, can we provide that if the farmer gets—maybe gets 10 percent back or 2 percent or whatever it is——

Mr. BERNARD. Go to the CCC with it.

Senator HUDDLESTON. That ought to be deducted from what he might get from the balance—

Mr. BERNARD. I don't think anybody would be against that.

Mr. SPRAGUE. I would just like to say again that that—in Kentucky, our feeling was that we would want to make this thing strictly a business, a legitimate business thing; we are not——

Senator HUDDLESTON. Have they made any disbursement on that?

Mr. SPRAGUE. No, we have had a letter from the trustee saying it looks like we can get 23 percent or something like that.

Senator HUDDLESTON. So if you got 23 percent back, I presume it would be in cash.

Mr. SPRAGUE. Yes.

Senator HUDDLESTON. Then you would get the other 77 percent from the program that we are enacting?

Mr. SPRAGUE. Right.

Senator COCHRAN. You heard me ask Mr. Marxman what was the anticipated cost to the Government this program would be and they didn't have any answers where they had costed it out.

You indicated in your testimony that you thought the maximum exposure was about $25 million. Is that right? Did I understand that right?

Mr. BERNARD. That covered 110 elevators. That was the information I picked up out of the Congressional Record back some time ago. But it was 110.

Senator HUDDLESTON. Well, how did you figure that? Would that be their total loss on it?

Mr. BERNARD. No. It's just a figure that I picked up out of the Congressional Record, 110 elevators at that time. But in my figuring, that is about what I come up with—the biggest one has been that Coast Trading thing out on the west coast.

Senator HUDDLESTON. But you don't figure that as a loss; you figure that as the exposure. That's what they would put out and of course they are going to get most of it back.

Mr. BERNARD. But, Senator, that is what would be put out if everybody participated.

Senator HUDDLESTON. Participated. Right.

Mr. BERNARD. Participated.

And what I am saying is, everybody is not going to participate, because I have got friends at home that lost less than $5,000, and they are not going to the redtape of——

Senator HUDDLESTON. For instance, there shouldn't be any additional appropriations unless as I say that situation resulted where they would have to go in the market and use some money to replace it.

Mr. BERNARD. I don't want to have to go buy any grain. I mean, if that's got to be done, we just——

Senator HUDDLESTON. Well, you could put a requirement in here on the basis of existing stocks. If they didn't have the stock they would wait until they got it.

Mr. BERNARD. That's right.

And there again, it would be good to——

Senator HUDDLESTON. The way things are going now, they are going to have a hell of a lot.

Mr. BERNARD. I probably could wait another year, but I have got some friends at home that can't wait 6 months, you know, they are really—this thing—you would be surprised; it has really affected a lot of people's health, their family relationships, their relationships with their friends. These are some pretty trying things to go through, you know.

Senator COCHRAN. How many elevators have been affected in your area?

Mr. BERNARD. Well——

Senator COCHRAN. Just one or is there more than one?

Mr. BERNARD. Just one right near Memphis. We are right across the river—I am right across from——

Senator COCHRAN. Yes. I know where you are. I have been fishing at Horse Shoe Lake.

Mr. BERNARD. I am right across from—well, that's where we are.

Senator COCHRAN. I didn't catch anything. [Laughter.]

Mr. BERNARD. But this one there and then up in northeast Arkansas that now famous James thing that I—then in west Tennesse right near Memphis there have been three or four, there have been Kentucky, Iowa, Missouri, North and South Dakota, Montana, Washington, Oregon, Louisiana and I believe that's what I—but just the two. The James Brothers had three or four different facilities up there I think.

Mr. EAKER. Mr. Chairman, in our particular area, in a 20-mile radius of where we live, there have been three in the past 3 years. The Boeving Brothers grain elevator and of course the Cowan Seed Co., which I am involved in, and then the James Brothers. They are all within a 20-mile radius there; and you can imagine what kind of shape our community is in after experiencing all that.

Because it doesn't just directly affect the farmers. This thing spreads out and touches a lot of people.

Mr. BERNARD. I guess we need to move to Mississippi. [Laughter.] They haven't had any failures down there.

Senator COCHRAN. I thank you for being here, Senator. I appreciate you and David Pryor both being here to help with the hearing. I think we have learned a lot about some of the practical impacts of these involvements in these bankruptcies. This is, I think, a very innovative suggestion that you have advanced, Mr. Bernard, reflected in the legislation that is introduced by Senator Pryor.

I think it does merit the very careful consideration of our subcommittee and every effort needs to be made by the Congress to come up with a workable answer to this problem. I am particularly impressed with the fact that many of these losses are directly attributable to Government action.

As you point out, during the Carter administration, imposing the embargo on the Soviet Union is a direct cause of the losses that you sustained; and I certainly see merit in the Congress trying to come up with some way to help farmers get over the effects, especially where they have sustained direct losses as a result of that action.

There are many other considerations. I know we have some details that have to be worked out, the question of whether or not there is any need for transportation of commodities; and you are suggesting that there may not necessarily be transportation in-

volved only the issuance of the evidence of ownership wherever the grain or commodity is located.

But I think the details can be worked out; it doesn't have to be a problem that is incapable and not susceptible of solution. I think we can come up with something that we all will be able to agree on. And you have my assurance that we will work hard on it and continue to stay in touch with you and work in a cooperative way with Senator Pryor and others to try and get this thing accomplished.

Thank you very much for your cooperation.

Mr. BERNARD. Thank you very much.

Mr. EAKER. Thank you.

Senator COCHRAN. The hearing is adjourned.

[Whereupon, at 11:03 a.m., the subcommittee adjourned, subject to call of the Chair.]

APPENDIX

STATEMENT OF HON. THAD COCHRAN
A U.S. SENATOR FROM MISSISSIPPI

Problems caused by elevator bankruptcies are of grave concern, not only to farmers affected by such insolvencies, but to related agribusinesses and local communities in general. Considerable attention has already been directed toward this problem by this committee and other committees of the Senate. In fact, the Senate has adopted numerous measures over the past several years to cope with the situation.

Today we will be hearing from witnesses on a proposal by Senator Pryor, referred to as the Grain Storage Compensation Act of 1983. This measure proposes to expand the PIK program by allowing farmers who have suffered losses due to the insolvency of a grain elevator to receive government surplus commodities in the form of a "In-Kind-Loan" to help them recover from their loss.

The concept is interesting and I look forward to hearing what our witnesses have to say on Senator Pryor's proposal. I know that the problems suffered by producers who find themselves in such situations are of particular concern to Senator Pryor as well as myself and the other members of the committee. I would like to commend Senator Pryor on the field hearings he conducted in Arkansas earlier this year on this proposal. Today's hearing is an important next step to see that this proposal receives full consideration. Problems caused by elevator failures deserve the full attention of the Senate Agriculture Committee.

At this time I would like to call on Senator Pryor, sponsor of this bill, to make any statement he would like.

STATEMENT OF HON. WALTER D. HUDDLESTON
A U.S. SENATOR FROM KENTUCKY

Mr. Chairman, thank you for scheduling this hearing to receive testimony on S. 596, the Grain Storage Compensation Act of 1983. S. 596 was introduced by Senator Pryor, and I was pleased to join him as a cosponsor of the bill.

The modifications to S. 596 proposed by Senator Pryor today, I believe, strengthen the bill; and I commend Senator Pryor for offering them.

S. 596 addresses an inequity that has faced a number of farmers in recent years. These are farmers who have put their harvested crops into storage with a commodity warehouse, and then discovered that they cannot get their commodities out of the warehouse because the warehouse has become insolvent and the commodities stored in the warehouse have been seized to cover the warehouse's debts.

S. 596, with the Pryor modifications, requires that surplus CCC commodities be made available to farmers who have suffered losses because of the insolvency of a warehouse.

Specifically, the bill, as modified, provides that, in any case where a depositor has sustained a loss of grain, cotton, or any of a number of other agricultural commodities, as a direct result of the insolvency of a warehouse in which the commodity was stored, the depositor will be eligible for surplus commodities held by the Commodity Credit Corporation, in an amount that the Secretary of Agriculture determines sufficient to compensate the depositor for his loss.

To be eligible to receive surplus commodities, a depositor must enter into a contract with the Secretary of Agriculture under which the depositor agrees to pay back the Secretary for the surplus commodities over time. The depositor will be required to agree to transfer to the Secretary, in not more than ten equal annual installments, agricultural commodities in an amount that the Secretary determines will equal the value of the surplus commodities received by the depositor.

For the bill to apply to a warehouse, the insolvency of the warehouse must have occurred at any time between December 1, 1979, and the date of enactment of S. 596.

The legislation specifies certain other criteria for eligibility for surplus commodities. A depositor who has sustained a loss must file a written application for commodities within 60 days after the Secretary of Agriculture publishes written notification of the compensation program. The application must be filed with the depositor's local ASCS office and must include a description of the type and quantity of commodities lost as a result of the insolvency.

Mr. Chairman, I look forward to hearing the testimony of today's witnesses.

STATEMENT OF HON. DALE BUMPERS
A U.S. SENATOR FROM ARKANSAS

I appreciate the opportunity to provide the committee with the reasons for my strong support for S. 596, the Grain Storage Compensation Act of 1983. I would like to commend the distinguished chairman for holding this hearing today and especially my close

colleague, Senator Pryor, for introducing S. 596, and for his tireless efforts on behalf of our farmers.

The front page reporting of elevator failures has largely disappeared in recent months, but the disastrous legacy still haunts many of our farmers who have no hope of survival other than with the immediate aid of a compassionate government. These farmers are not asking for a handout, but they are asking for government assistance as a last resort in rectifying an outrage that only the government has the ability to correct.

The elevator failure issue has not gone unnoticed in the Senate, and I hope that we will succeed in enacting one of the bills that offers prospective relief to farmers caught in these nightmares. However, we must not forget those farmers who have already suffered heavily due to an elevator collapse, and S. 596 provides a way for compensating those caught in this tragic situation.

The Grain Storage Compensation Act offers a simple plan of compensation that utilizes already existing programs and government agencies. Those farmers who suffered losses because of a public elevator collapse since December 1, 1979, would be eligible for compensation from government stocks upon filing a verifiable claim with their local ASCS. This period of eligibility corresponds with the serious depression of the agriculture economy initiated by the embargo of exports to the Soviet Union, and includes over 75 collapses of public grain elevators. The Secretary would have the authority to designate the type and quality of commodity to be provided eligible farmers. This insures that no strain will be placed on PIK-short commodities. The experience gained through the PIK program will, we hope, facilitate a smooth and effective compensation program.

Each elevator collapse is a serious blow to the livelihood of the farmers involved and to the rural community as a whole. The often protracted and unsatisfying legal proceedings surrounding an elevator collapse exacerbate the feelings of helplessness in our farmers and reinforce the belief that their elected representatives lack concern or understanding. S. 596, which I am proud to cosponsor, is a small expansion of the PIK program, yet it provides a tremendous helping hand to many, and a morale boost to all who toil in America's greatest business.

STATEMENT OF MERRILL MARXMAN DEPUTY ADMINISTRATOR, COMMODITY OPERATIONS, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Committee, I appreciate the opportunity to meet with you today to discuss the legislation proposed by S. 596, dealing with insolvencies of public grain warehouses. I will begin this morning by giving a little of the history of where we have been and where we are now regarding bankruptcies.

The USDA is aware of and concerned about the problem of grain elevator bankruptcies. On February 26, 1981, the Grain Elevator Task Force was formed at the direction of Secretary Block. The Task Force issued its report, in which it made seven recommendations, on August 18, 1981.

Those seven recommendations were:

1. USDA coordination of Federal-State efforts with regard to warehouse standards.
2. Amend CCC standards for approval such that: (a) warehousemen file an unqualified certified statement prepared by a CPA, (b) increase net worth requirements, (c) provide for irrevocable letters of credit in lieu of bonds.
3. Increase net worth requirements and require an unqualified certified statement prepared by a CPA of all warehouses licensed under the U.S. Warehouse Act.
4. Special USDA team to deal with warehouse problems after a license has been suspended.
5. Initiate a policy pertaining to bankrupt elevator cases where USDA has a vested interest.
6. Develop a comprehensive information package.
7. Create an ad hoc committee to study USDA audit costs and sources as they relate to user fees imposed by the USDA.

The USDA has made substantial progress in meeting the goals defined by the Task Force's seven recommendations. Progress to date made on each of these recommendations include:

1. Work is ongoing to develop cooperative agreements between USDA and the States.
2. Effective July 1, 1982, Uniform Grain Storage Agreement (UGSA) financial net worth requirements were increased from 10 cents per bushel times the approved capacity of the warehouse to 20 cents per bushel, and an irrevocable letter of credit would be accepted in lieu of a surety bond in cases where warehouses could not meet the minimum financial requirements. Warehousemen were required to file an independent public accountant (PA) review statement on their warehouse operations. USDA would examine all UGSA warehouses once a year with the option of additional reviews requested by the Commodity Credit Corporation (CCC).
3. Effective July 1, 1982, minimum financial net worth requirements for warehouse licenses under the U.S. Warehouse Act were increased from $10,000 to $25,000. Warehousemen were required to file an audit by a certified public accountant. However, an audit or review by an independent public accountant would be acceptable with the understanding that the warehouseman would be subject to an additional on-site examination by the Secretary, and to an audit by the Secretary.
4. A REACT Team was established to deal with problem warehouses.
5. This matter is under study and no decision has been made.
6. The Extension Service has prepared a publication for farmers on grain elevator bankruptcies.

7. Review was made prior to announcement of the user fee schedule.

Since January 1, 1981, there have been 22 filings of bankruptcy by grain warehouses under contract to CCC. Sixteen filed under chapter 11; the remainder filed under chapter 7. At least eight had CPA audits and four had CPA reviews.

The nature and scope of the grain elevator bankruptcy problem needs careful definition. The rate of bankruptcy among grain elevators is much lower than the rate for all businesses. Although grain elevator bankruptcies are not a widespread problem, an elevator bankruptcy can cause severe dislocations within its area of trade.

The USDA supports amendment of the Bankruptcy Act to require that property interests of farmers and other grain handlers be given priority attention. This would go a long way toward relieving the distress caused by lengthy bankruptcy proceedings. Any such amendment should neither interfere with State regulation of grain warehouses nor undermine the validity of the warehouse receipt.

The USDA does not believe that creation of a new agency is necessary to address the grain warehouse bankruptcy problem; nor does the USDA support indemnity or insurance programs. Insurance programs would place additional record keeping and compliance burdens on warehouse operators. The cost of premiums would eventually increase costs to the producers who do business with the warehouse. An insurance program would require an enlarged bureaucracy even if no new agency were created. The magnitude of the bankruptcy problem does not warrant the extra expense and paperwork that would be involved with an insurance program.

The Department opposes enactment of S. 596.

S. 596 would provide assistance to any depositor who has lost grain through the insolvency of warehouses during the period beginning December 1, 1979, and ending on the date of enactment of the bill. Under the bill, the Secretary of Agriculture would be required to provide a loan of surplus commodities, of the same type, amount and quality lost in the bankruptcy, to such a depositor. The surplus commodities would come from available CCC stocks. Substitutions would be permitted where there were insufficient surplus stocks of a particular commodity. To be eligible for this loan, a depositor must agree to repay it, in kind, in no more than ten equal annual installments.

The Grain Elevator Task Force identified two important nonquantifiable factors in grain elevator failures as being the recent state of the general economy and high interest rates charged on business loans. Of factors which contributed to bankruptcy and which could be quantified poor management was the most important, followed by inadequate record keeping, possible criminal activity, collateral warehouse receipts, quality/quantity problems, possible diversion of funds, future market speculation, and delayed pricing contracts. Furthermore, it should be noted

that there were 37 grain elevator bankruptcies in 1979, and 37 in 1980.

In our view, it is inappropriate to divert CCC stocks, which have been acquired in connection with the administration of the Department's price support and production stabilization programs and are intended for use in carrying out CCC activities, into a program which guarantees not only agricultural producers but virtually everyone else in the grain trade, against losses because of a warehouse bankruptcy. We believe it particularly inappropriate that CCC assets be used to provide compensation for the bankruptcy of warehouses which have not met minimum federal standards by obtaining a license under the U.S. Warehouse Act or entering into a Uniform Grain Storage Agreement with CCC. As the bill is currently worded, it appears that such warehouses would not even have to meet minimum state licensing standards in order for a depositor to receive compensation.

In addition, we believe the steps USDA has already taken and continues to take will obviate the need for enactment of S. 596 and the related expenditures.

Mr. Chairman, this concludes my statement and I will be glad to respond to any questions from the Committee.

98TH CONGRESS
1ST SESSION

S. 596

To provide surplus commodities to farmers who lost grain stored in certain insolvent warehouses.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 23), 1983

Mr. PRYOR introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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A BILL

To provide surplus commodities to farmers who lost grain stored in certain insolvent warehouses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Grain Storage Compensation Act of 1983".

DEFINITIONS

SEC. 2. As used in this Act, unless the context clearly requires otherwise—

(1) the term "depositor" means the owner or holder of a scale ticket, a warehouse receipt, or other original source document issued by a public grain

warehouse for grain who resides in a State and who is entitled to possession or payment for the grain represented by such ticket, receipt, or other document;

(2) the term "grain" means barley, corn, cotton, dry edible beans, flaxseed, grain sorghum, oats, rice, rye, soybeans, sunflower seeds, wheat, and any other commodity which is commonly classified as a grain and traded at, or stored in, a warehouse;

(3) the term "insolvent" has the same meaning given to such term under section 101(26) of title 11, United States Code;

(4) the term "Secretary" means the Secretary of Agriculture;

(5) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific;

(6) the term "surplus commodities" means agricultural commodities owned and held by the Commodity Credit Corporation that are not obligated for any other purpose under any other provision of law; and

(7) the term "warehouse" has the same meaning given to such term under section 2 of the United States Warehouse Act (7 U.S.C. 242).

COMPENSATION FOR INSOLVENCY OF LICENSED WAREHOUSES

SEC. 3. In any case in which a depositor has sustained a loss of grain, the loss of such grain was the direct result of the insolvency of a public grain warehouse in which the grain was stored, and the insolvency of such warehouse occurred at any time during the period beginning on December 1, 1979, and ending on the date of the enactment of this Act, the Secretary shall transfer to such depositor, in accordance with this Act, surplus commodities, or title to such commodities, in an amount, type, and quality the Secretary determines sufficient to compensate such depositor for such loss.

NOTICE OF COMPENSATION

SEC. 4. (a) Within sixty days of the date of enactment of this Act, the Secretary shall publish—

(1) in the Federal Register a notice containing a list of the public grain warehouses throughout the United States which became insolvent during the period described in section 3; and

(2) in a newspaper of general circulation in the area of each public grain warehouse which became insolvent during the period described in section 3 a notice containing the name of such warehouse.

(b) The Secretary shall include in each notice described in subsection (a) a summary of the compensation program

provided for in this Act, including a summary of the eligibility requirements described in section 5(a).

PAYMENT OF COMPENSATION

SEC. 5. (a) To be eligible to receive compensation under this Act, a depositor must, within sixty days after the date of publication of the notice described in section 4(a)(2), file a written application for such compensation with the depositor's local office of the Agricultural Stabilization and Conservation Service. The application must describe the type and quantity of grain lost as a result of the insolvency of a warehouse described in section 3.

(b)(1) Within thirty days of the receipt of an application described in subsection (a), the Secretary shall determine if a depositor qualifies for compensation under this Act.

(2) If the Secretary approves an application for compensation under this Act, the Secretary shall, at the earliest practicable time, transfer to such depositor surplus commodities, or title to such commodities, in accordance with section 3.

(3) If the Secretary denies, in whole or in part, an application for compensation under this Act, the depositor shall have the right to appeal administratively such denial.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out this Act.